

**STATE COASTAL CONSERVANCY**  
**REQUEST FOR**  
**STATEMENTS OF QUALIFICATION**

**Landscape Architectural and/or**  
**Architectural Services**  
**for**  
**Development of an**  
**ADA Self-Evaluation and**  
**Transition Plan**

February 13, 2017



## **I. INTRODUCTION**

The State Coastal Conservancy (Conservancy) is seeking the services of a landscape architectural or architectural consultant or consulting team (“consultant”) with a specialization in federal and state accessibility laws and associated design parameters. The consultant will assist the Conservancy in its efforts to ensure that it is taking all reasonable measures to avoid discrimination against persons with disabilities, as required by current state and federal law. The Consultant will assist the Conservancy in meeting requirements of Title II of the Americans with Disabilities Act (ADA) and other state and local laws affecting access, by identifying and evaluating all Conservancy programs, activities, and services, and by reviewing all policies, practices, and procedures that govern administration of the Conservancy’s programs, activities, and services.

The consultant will assist the Conservancy to complete particular tasks identified under “V. Scope of Services,” below and work will be commenced immediately upon the completion of contractual negotiations.

This request for statement of qualifications (“RFS”) is organized into seven sections as follows:

- Section I: Introduction (above)
- Section II: Project Background
- Section III: Project Schedule
- Section IV: RFS Process, Requirements, and Selection Schedule
- Section V: Scope of Services
- Section VI: Project Deliverables
- Section VII: Information to be Included in Submittal

The consultant should be aware of the typical terms which apply to most Conservancy consultant contracts, which are shown in Attachment A (Standard Contract Provisions) to this RFS.

**Submittals must be received by 12:00 p.m. (noon) on Friday, March 24, 2017.**

Please submit one electronic copy (saved as a .pdf file that is no larger than 15 MB) via email to Amy Hutzal, [amy.hutzal@scc.ca.gov](mailto:amy.hutzal@scc.ca.gov).

## **II. PROJECT BACKGROUND**

This section provides a brief overview of the State Coastal Conservancy, project purpose and background. More detailed information about the Conservancy can be found on the Conservancy’s website, <http://scc.ca.gov>.

The Conservancy is a non-regulatory state agency that uses a variety of techniques to purchase, protect, restore, and enhance coastal resources, and to provide access to the shore. The Conservancy works in collaboration with local governments, other public agencies, non-profit organizations and private landowners to undertake projects along the 1,100 mile California coastline and around San Francisco Bay. In large part, the Conservancy undertakes projects through providing grants to non-profit organizations and

public entities, which then carry out the acquisition or work. From time-to-time, the Conservancy does directly undertake coordination and planning for several large, complex or inter-jurisdictional projects and also occasionally will carry out project work or acquisitions directly.

Over the past 40 years, the Conservancy has provided funding to projects that resulted in the development of hundreds of miles of new trails, and funded hundreds of projects that opened previously inaccessible coastal areas or improved recreational or educational facilities. The Conservancy has also been directly and primarily responsible for the coordination, planning and implementation of a multitude of projects to provide access to and along the coast. These projects have included major statewide or regional programs, such as the California Coastal Trail, the San Francisco Bay Trail, the San Francisco Bay Water Trail, the Bay Area Ridge Trail, and the Santa Ana River Parkway, as well as specific project sites, such as the Fort Bragg waterfront, Hamilton Wetlands in Novato, and the South Bay Salt Pond Restoration Project. The Conservancy has also funded hundreds of environmental education or interpretive programs that enhance people's experience. A number of these Conservancy-funded and Conservancy-coordinated projects have expanded opportunities to improve accessibility for people with disabilities.

The Conservancy's 2013-2018 Strategic Plan explicitly provides that the Conservancy will continue to improve coastal access for all segments of the population and that each of its programs are planned, designed, and implemented in such a way as to provide persons with disabilities the opportunity to participate in the program in a meaningful way. Goals 1, 2, 3, 9, and 12 address increasing public access and recreational or educational opportunities, and associated objectives (1F, 2A, 3A, 3B, and 12L) specifically address expanding access for persons with disabilities. The Strategic Plan is located here: <http://scc.ca.gov/webmaster/reports/SCC-Strategic-Plan-Update-2015.pdf>

The purpose of this project is two-fold: to help the Conservancy prioritize its work, including allocation of staff resources and project funding, so that it can meet its strategic plan goals pertaining to improving and expanding access to the coast and San Francisco Bay for persons with disabilities; and, to assist the Conservancy in meeting requirements of Title II of the Americans with Disabilities Act by identifying and evaluating all Conservancy policies, programs, activities, services, and physical barriers to accessibility, and to develop an updated Transition Plan with recommendations for barrier removal solutions.

The Project Manager for this contract is the Conservancy's ADA Coordinator, Amy Hutzel.

### **III. PROJECT SCHEDULE**

The contract is expected to be executed in May, 2017, and completed no later than December, 2017. Work will commence soon after the finalization of the contract.

### **IV. RFS PROCESS, REQUIREMENTS AND SELECTION SCHEDULE**

This section outlines the RFS process, the requirements (criteria) that must be met by the consultant to be considered for the proposed contract, and the schedule for consultant

selection. Detailed information on the required form and content of the submittal is provided in Section VII.

#### **A. GENERAL REQUIREMENTS**

The consultant will furnish all necessary labor, facilities, equipment, and materials to perform the work. The consultant will be available to meet with Conservancy project manager and other staff. Further, the consultant will travel to up to seven Conservancy-owned or funded sites located on the California coast or in the Bay Area. The consultant will need to provide his or her own vehicle. The consultant may subcontract preparation of portions of this work, but the entire project team should be described in this submittal and must be approved in advance by the Conservancy before any work (to be paid through the Conservancy contract) is performed.

#### **B. REQUIRED KNOWLEDGE/SKILLS/EXPERIENCE**

This subsection lists the required knowledge, technical skills, and the required interpersonal skills for the consultant's project manager and key staff.

##### **Special Certificates or Degrees**

Required:	Licensed Architect or Landscape Architect in the State of California
Desirable:	Current Certified Access Specialist program (CASP) certificate

##### **Knowledge/Skills/Experience**

**Knowledge of laws related to accessibility.** In addition to being a licensed and experienced landscape architect or architect, the consultant must be knowledgeable about and have at least five years' practical experience applying accessibility-related federal, state (California) and local laws that are relevant to the development of an ADA Self-Evaluation and Transition Plan, and must have experience with the development and completion of Self-Evaluation and Transition Plans in the state of California. The consultant must be able to converse clearly and patiently with others who do not possess this specialized knowledge about these accessibility laws and be able to provide citations for such laws as needed.

**Understanding of programmatic accessibility.** An understanding of the concept of programmatic accessibility and how to reduce barriers to accessibility at a program-level in addition to a site-specific level is also required; familiarity with programmatic accessibility plans developed by other public agencies or non-profit organizations is highly desirable. Creative and yet practical thinking will be needed to help guide the development and completion of the Transition Plan.

**Experience in engaging people with disabilities.** The consultant must have experience in engaging and communicating with people with disabilities through multiple formats, both to provide insights for the Conservancy's self-evaluation and to make specific recommendations for ongoing communications in the Transition Plan.

**Accessible public access and recreation planning and design experience.** The Conservancy is concerned with site features that relate directly to accessibility to and

along trails and at coastal recreational sites or other related facilities, such as education centers, overlooks, piers, marinas or other recreational boating facilities, restrooms, parking lots, and other closely related features, such as safety or informational signs. The consultant must therefore have the technical skills and experience to:

- Assess the accessibility of Conservancy-owned sites in particular, and representative Conservancy-funded projects more generally, and suggest ways to improve access within any constraints relevant to the site (for example, adjacency to sensitive habitat); and
- Provide cost estimates for such modifications at Conservancy-owned sites.

**Excellent writing skills.** The successful candidate must also be attentive to detail, produce high caliber written documents without typographical and grammatical errors, and work on accessibility issues with a balanced and unbiased approach.

### **Project Manager and Key Staff**

The consultant Project Manager and key staff must have excellent organizational, and written and oral communications skills. References will be required for the Project Manager, and for other key staff. The Conservancy prefers that the Project Manager and some of the key staff have prior direct experience working together.

### **C. OTHER REQUIREMENTS**

In addition to the skills and experience requirements outlined above, the following requirements apply:

1. Commitment of Overall Project Manager: The consultant must guarantee that the Project Manager will be made available to the project for the duration of the project (unless that individual leaves the firm).
2. Contract Negotiations: The Conservancy will enter into contract negotiations with the highest-ranked consultant firm/consultant team, following submittal of qualification/statement of approach and interviews, and attempt to negotiate a contract at compensation that the Conservancy determines is fair and reasonable to the State of California. If the Conservancy is unable to do so, negotiation with that firm/team will be terminated and negotiations will then proceed in the same manner with the other firms/teams on the list in order of ranking. If the Conservancy is unable to negotiate a satisfactory contract with any of the selected firms/teams, the Conservancy may select additional firms and continue the negotiation process.
3. 10% Withholding: The consultant will be paid for its actual time and expenses up to the amount provided for each task in the final project budget. The consultant should anticipate that ten percent (10%) will be withheld on each task, until all work for that task is completed to the satisfaction of the Conservancy. The Conservancy must also approve all interim work products before payment.
4. Standard Contract Provisions. The retained consultant will also be expected to agree to and comply with the substantive requirements of the “Standard Contract Provisions,” provided as Attachment A.
5. Proposal Format: Detailed proposal format specifications are provided in Section VII.
6. Deliverables: All contract deliverables must be submitted in reproducible form in

electronic version through email or a ftp site. More detail on deliverable requirements is provided in Section VI.

## **D. RFS AND CONTRACTOR SELECTION PROCESS**

### **RFS Process**

The RFS process consists of this written Request for Statement of Qualifications, submittal of a statement of qualifications, and an interview. As noted in the introduction, **written submittals are due by 12 p.m. (noon) on March 24, 2017.**

Written questions on the RFS should be directed to Amy Hutzal at [amy.hutzal@scc.ca.gov](mailto:amy.hutzal@scc.ca.gov). Questions related to the statement of qualifications will only be accepted by e-mail through March 10, 2017. Questions and responses will be compiled and sent by e-mail to those who have indicated by March 10 (via an email to Amy Hutzal) that they plan to submit a Statement of Qualifications, so that all may benefit equally from the responses.

### **Contractor Selection Process**

Conservancy staff will evaluate the statements of qualifications submitted under the criteria specified in this RFS and rank all submitted statements of qualifications. The Conservancy may request supplemental information and will conduct interviews with the top firms/teams. Final ranking will be a combination of the assessment of the written submittal and the interview.

The consultant will be hired under contract to the Conservancy. The Conservancy will attempt to negotiate a contract with the best-qualified firm/team at compensation that the Conservancy determines is fair and reasonable to the State of California. If the Conservancy is unable to do so, negotiation with that firm/team will be terminated and negotiations will then proceed in the same manner with the other firms/teams on the list in order of ranking. If the Conservancy is unable to negotiate a satisfactory contract with any of the selected firms/teams, the Conservancy may select additional firms and continue the negotiation process.

The interview will last up to 45 minutes; 15 minutes have been set aside for the presentation by the consultant. The consultant firm/team may bring a maximum of three (3) people to the interview. The proposed Project Manager must be present. Key staff need to be present if at all possible.

Potential contractors will be ranked based on the following factors.

#### **1. Disabled Veteran's Business Enterprise Requirements**

The State has established the Disabled Veteran Business Enterprise ("DVBE") Participation Goal Program for participation in state contracts. **To be considered responsive, submittals must meet the DVBE program requirements. The minimum DVBE participation percentage is 3% for this solicitation.** Proposals that fail to comply with DVBE requirements will be rejected. To be considered responsive, submittals must include the following completed forms, as applicable:

- Bidder Declaration, GSPD-05-105 (available at <http://www.documents.dgs.ca.gov/pd/poliproc/MASTER-BidDeclar08-09.pdf>)  
All potential contractors must complete the Bidder Declaration, GSPD-05-105 and include it with the bid response. When completing the declaration, bidders must identify all subcontractors proposed for participation in the contract. Bidders awarded a contract are contractually obligated to use the subcontractors for the corresponding work identified unless the State agrees to a substitution and it is incorporated by amendment to the contract.
- DVBE Declarations, STD.843 (available at <http://www.documents.dgs.ca.gov/pd/poliproc/STD-843FillPrintFields.pdf>)  
All contractors or who have been certified by California as a DVBE (or who are bidding rental equipment and have obtained the participation of subcontractors certified by California as a DVBE) must also submit a completed form(s) STD. 843 (Disabled Veteran Business Enterprise Declaration). All disabled veteran owners and disabled veteran managers of the DVBE(s) must sign the form(s).

At the State's option prior to award, potential contractors may be required to submit additional written clarifying information. Failure to submit the requested written information as specified may be grounds for bid rejection.

The potential contractor understands and agrees that should award of this contract be based in part on its commitment to use the DVBE subcontractor(s) identified in its bid or offer, per Military and Veterans Code § 999.5(e), a DVBE subcontractor may only be replaced by another DVBE subcontractor approved by the Department of General Services. Changes to the scope of work that impact the DVBE subcontractor(s) identified in the bid or offer and approved DVBE substitutions will be documented by contract amendment.

Failure of the potential contractor to seek substitution and adhere to the DVBE participation level identified in the bid or offer may be cause for contract termination, recovery of damages under rights and remedies due to the State, and penalties as outlined in M&V Code § 999.9; Public Contract Code ("PCC") § 10115.10.

Information submitted by the proposer to comply with this solicitation's DVBE requirements will be verified. If evidence of an alleged violation is found during the verification process, the State shall initiate an investigation, in accordance with the requirements of PCC §§ 10115, et seq., and Military & Veterans Code §§ 999 et seq., and follow the investigatory procedures required by California Code of Regulations Title 2, §§ 1896.90 et seq. Contractors found to be in violation of certain provisions may be subject to loss of certification, sanctions and/or contract termination

## 2. Demonstrated competence, including:

- Specialized qualifications for the services to be performed, as described throughout this RFS, but most specifically in this Section IV;
- The consultant's past experience with similar projects, especially the preparation of Transition Plans for public or private entities with multiple programs, facilities and services, and extending well-beyond a Transition Plan that focused primarily on physical facilities, improvements or land;
- The education and experience of key personnel, including the Project Manager;
- The consultant's management approach including the consultant's ability to stay on schedule;
- The clarity of the consultant's presentation and ability to articulate ideas and communicate with the interview panel, and

**3. Overall quality of the consultant as reflected in the submittal, including:**

- The clarity and completeness of the written submittal;
- The nature and quality of the consultant's past completed work;
- The longevity of the consultant's firm and amount of staff turnover, and

After reviewers assess these factors, the Conservancy will take into consideration the small business status of the contractor submitting a response. The small business status of the potential contractor will be considered as a deciding factor in the instance of a tie. Small businesses must be certified as such by the State Department of General Services – Office of Small Business and DVBE certification prior to selection. See

<http://www.dgs.ca.gov/Default.aspx?alias=www.dgs.ca.gov/pd> for more information.

The contract will be awarded without discrimination based on color, race, religion, sex, disability or national origin.

## **E. INTERVIEW SCHEDULE**

Interviews are expected to take place at the Coastal Conservancy on one day between April 3 and 14, 2017. We will seek a date that works for all parties. Negotiations and final execution of the contract could vary somewhat from the schedule below.

## **V. SCOPE OF SERVICES**

The contract is for landscape architectural and/or architectural professional services. The tasks are generally described below. More details with a budget and schedule will be included in an authorization to proceed with each task. Anticipated additional tasks are expected but are currently unknown.

**Task 1.** Identify all of the Conservancy's facilities, programs, activities and services and determine whether any physical barriers to access exist and identify the steps needed to enable these facilities, programs, activities, and services to be in compliance with federal, state and local laws governing access by persons with disabilities, when viewed in their entirety.

**Task 2.** Identify all of the Conservancy's policies, practices and procedures that govern the administration of programs, activities and services. This includes contracting requirements for planning, building and construction projects. Identify what, if any,



changes to policy, practices or procedures are needed to comply programmatically or otherwise with laws governing access by persons with disabilities.

**Task 3.** Identify all of the Conservancy's existing methods of communicating with the public and recommend additional or alternative communication methods and devices that would provide greater accessibility to individuals with disabilities.

**Task 4.** Review the Conservancy's emergency evacuation procedures for its Oakland office and identify modifications needed to ensure individuals with disabilities are adequately considered.

**Task 5.** Provide information and guidelines for the Conservancy to use in determining whether and under what circumstances, if any, it may be appropriate, legally or practically, to consider undue financial or administrative burden when assessing access for persons with disability.

**Task 6.** Identify measures that have been made to familiarize Conservancy staff with its policies and practices for providing full participation of individuals with disabilities. Suggest additional training and education, if needed.

**Task 8.** Develop an updated Transition Plan that meets the ADA's requirements. At a minimum, the elements of the plan should include:

- A. A list of the physical barriers in the Conservancy's facilities that limit the accessibility of its programs, activities, or services to individuals with disabilities and a detailed outline of the methods to be used to remove these barriers and make the facilities accessible.
- B. A list of programs and other services provided by the Conservancy and a detailed outline of the steps or methods needed to ensure a meaningful opportunity for participation in those programs and services by persons with disabilities.
- C. A schedule for taking the steps necessary to achieve compliance with the ADA, Title II.
- D. The name(s) of the individual(s) responsible for the plan's implementation.

## **VI. PROJECT DELIVERABLES**

The project deliverables include three written reports: the ADA Evaluation, a Transition Plan, and recommendations for how to most effectively implement the Conservancy's strategic plan components pertaining to accessibility for persons with disabilities. Reports and any project graphics will be delivered in hard copy and/or PDF and in Microsoft Word format, as requested by the Conservancy project manager. Deliverables may need to be delivered in alternate digital formats that will be ready for accessible website viewing.

## **VII. INFORMATION TO BE INCLUDED IN SUBMITTAL**

The total page limit for the body of the submittal is 10 pages, divided as follows and described below:

- Project Team Organization and anticipated utilization of each team member (2

- pages)
- Approach (6 pages)
  - Understanding of Project/Key Issues
  - Technical Approach
  - Management Approach
- Qualifications (2 pages)

In addition, the submittal should include the following (described in more detail below), which do not count towards the 10-page limit:

- Required DVBE forms (see **Disabled Veteran's Business Enterprise Requirements** above)
- Up to 3 Resumes, no more than 2 pages each, including the Project Manager's resume
- Up to 3 relevant, previously completed project descriptions, no more than 2 pages each

**The submittals should not include any information about proposed cost, labor rates or any other financial information.**

Submittals should be single-spaced and double-sided on 8.5-inch by 11-inch format, using a font size of 11 or greater. Page limitations are based on each side of a sheet of paper counting as one page (i.e., a 10-page double-sided section consists of 5 sheets of paper). The submittals should be organized so that the information requested below is clearly identified for the reviewer. However, the submittals need not present the information in the order provided below. The organization of the requested sections is left to the consultant's discretion. Incomplete submittals (i.e., submittals not providing all of the information requested below) and incorrectly formatted submittals (for example, submittals that do not follow the requirements established for certain items such as project descriptions) may be rejected.

#### **A. TEAM ORGANIZATION**

The page limit for this section, including the project organization chart, is 2 pages. This section should include the following information:

- Description and project organization chart of how your project team will be organized. Please identify the Project Manager and key staff by name, their tasks and responsibilities for completing the work program and where they are physically located.
- Three references for the Project Manager that can substantiate the Project Manager's ability to deliver the requested products on time and within budget. The Project Manager need not be a technical expert, but must be an expert Project Manager.
- If proposal includes more than one consultant team, please specify whether firms have worked together on projects in the past, and provide a brief listing of the projects and the firms that worked on the projects.

- Longevity of firm and amount of turnover (for teams, please provide this information for each member of the team). Indicate the length of time Project Manager and key staff have been with the firm.

## **B. APPROACH**

The page limit for this section is 6 pages. Please describe your (team's) approach to addressing the technical and logistical challenges posed by this project. You must describe your:

- Understanding of the Project and ADA requirements.
- Technical Approach.
- Management Approach. This discussion should include project communications with Conservancy staff, and a description of the process you intend to use to ensure that schedules are met, and budgets are effectively controlled. Provide examples of how you have met this challenge in the past on other projects, especially projects that were subject to stakeholder involvement and conflicting project objectives.

## **C. QUALIFICATIONS**

Please describe the qualifications of your firm/team as they apply to this contract (2-page limit). Explain how the firm/team has obtained the required expertise relevant to the various technical tasks. This section should include a brief overview of each firm on the team and a biographical sketch for the Project Manager and all key staff.

DVBE forms, resumes, and relevant project descriptions should be provided in an appendix. Resumes should only be provided for the Project Manager and key staff. Individual resumes must be no more than 2 pages in length.

The project descriptions must contain the following information:

- value of contract to consultant(s)
- specific description of what the firm(s) did on the project
- client name and contact information
- project description/background
- staff who worked on project who are key staff identified in the submittal (including the Project Manager).

### Anticipated Utilization of each Team /Office (%)

Describe the anticipated level of effort (utilization) for each firm's office that will be used on this contract in narrative as well as in percentage format. **To be considered responsive, submittals must meet the DVBE program requirements. The minimum DVBE participation percentage is 3% for this solicitation.**

## **ATTACHMENT A**

### **STANDARD CONTRACT PROVISIONS**

#### **TERM OF CONTRACT, EARLY TERMINATION AND SUSPENSION**

This contract shall take effect when signed by both parties. An authorized representative of the contractor shall sign the first page of the originals of this contract in ink.

The term of this contract is from its effective date through \_\_\_\_\_ (“termination date”). However, all work shall be completed by \_\_\_\_\_ (“the completion date”). The term of this contract is based on the current level of funding available for the services to be provided under this contract. If additional funding is authorized, the parties anticipate that the term of the contract will be extended and the scope of work will be revised by amendment.

The Conservancy may terminate this contract for any reason by providing the contractor with seven days notice in writing. During the term, the Conservancy may also suspend the contract upon written notice. In either case, upon receipt of the notice of termination or suspension, the contractor shall immediately stop work under the contract and take whatever measures are necessary to prevent further costs to the Conservancy under this contract. The Conservancy shall be responsible for any reasonable and non-cancelable obligations incurred by the contractor in the performance of this contract up to the date of notice to terminate or suspend, but only up to the unpaid balance of total funds authorized under this contract. Any notice suspending work under this contract shall remain in effect until further written notice from the Conservancy authorizes work to resume.

On or before the date of termination of the contract under this section, the contractor shall provide the Conservancy with all work, material, data, information, and written, graphic or other work produced or developed under this contract (whether completed or partial), in appropriate, readily useable form.

The contractor shall include in any contract with any subcontractor retained for work under this contract a provision that entitles the contractor to suspend or terminate the contract with the subcontractor for any reason on written notice and on the same terms and conditions specified in this section.

#### **WORK PRODUCTS**

The contractor hereby assigns to the Conservancy and the Conservancy accepts the assignment of all rights and interest in all material, data, information, and written, graphic or other work produced under this contract, including, without limitation, any right to copyright, patent or trademark the work.

The contractor shall include in any contract with a third party for work under this contract a provision that preserves the rights created by the first paragraph of this section, and that identifies the Conservancy as a third-party beneficiary of that provision.

Pursuant to Government Code section 7550, any document or written report that is produced under this contract at a cost of greater than \$5,000 shall contain a separate section

disclosing all contracts and subcontracts related to the production of the document or written report, including the contractor or subcontractor name, contract number, and total amount of the contract or subcontract.

In any work products produced pursuant to this contract, the contractor shall state, in a prominent location, that the work product was prepared on behalf of, and paid for, by the Conservancy. **[Add the following if Prop. 1 funding:** The contractor shall also acknowledge funding from the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1) by using the official logo prepared by the California Natural Resources Agency, which the Conservancy has available in various file formats.] The contractor shall provide similar acknowledgement in any public presentation or publication which describes or utilizes any work product produced pursuant to this contract. Any reference on contractor's website to this contract's work products shall state that the work product was prepared on behalf of, and paid for, by the Conservancy, and shall include a link to the Conservancy's website. The contractor shall impose the obligations described in this paragraph on its subcontractors and shall include a similar provision to this paragraph in any agreement for work pursuant to this contract.

#### **EXPENDITURE OF FUNDS AND ALLOCATION OF FUNDING AMONG BUDGET ITEMS**

The total amount of this contract may not be increased except by amendment to this contract. The contractor shall expend funds in the manner described in the budget included under the "SCOPE OF CONTRACT" section, above. The allocation of funds among the items in the budget, other than overhead and indirect costs, may vary by as much as ten percent without approval by the Executive Officer, provided that the contractor submits a revised budget to the Executive Office prior to requesting disbursement based on the revised budget. Any difference of more than ten percent, and any deviation that shifts funds from approved budget items into an overhead or indirect costs category, must be identified in a revised budget that is approved in advance and in writing by the Executive Officer. The Conservancy may withhold payment for changes in particular budget items which exceed the amount allocated in the approved budget by more than ten percent and which have not received the approval required above. Any increase in the funding for any particular budget item shall mean a decrease in the funding for one or more other budget items unless there is a written amendment to this contract.

#### **INDEMNIFICATION AND HOLD HARMLESS**

The contractor shall be responsible for, indemnify and save harmless the Conservancy, its officers, agents and employees from any and all liabilities, claims, demands, damages, or costs, including without limitation litigation costs and attorneys fees, resulting from or arising out of the willful or negligent acts or omissions of the contractor, its officers, agents, subcontractors and employees, or in any way connected with or incident to this contract, except for the active negligence of the Conservancy, its officers, agents or employees. The duty of the contractor to indemnify and save harmless includes the duty to defend as set forth in Civil Code section 2778.

The contractor waives any and all rights to any type of express or implied indemnity or right of contribution from the State, its officers, agents or employees, for any liability resulting from, growing out of, or in any way connected with or incident to this contract.

The obligations in this “INDEMNIFICATION AND HOLD HARMLESS” section shall survive termination of this contract.

## **INSURANCE**

Throughout the term of this contract, the contractor shall procure and maintain insurance, as specified in this section, against claims for injuries to persons or damage to property that may arise from or in connection with any activities by the contractor or its agents, representatives, employees, or subcontractors associated with the project undertaken pursuant to this contract.

1. **Minimum Scope of Insurance.** Coverage shall be at least as broad as:
  - a. Insurance Services Office (“ISO”) Commercial General Liability coverage (occurrence Form CG 0001 or comparable).
  - b. Automobile Liability coverage - ISO Form Number CA 0001, or comparable (covering “Any Auto” or Owned, Hired and Non-owned autos).
  - c. Workers’ Compensation insurance as required by the Labor Code of the State of California. **[If watercraft being used, with “crewmembers”, add or replace with: Jones Act Coverage for masters and crew members of a US-flagged vessel, as applicable; add/include the following if project work includes personnel loading and unloading apart from masters and crew: and Longshore and Harbor Workers and Compensation Act Coverage for longshore workers or other persons in longshore operations, and any harbor workers, as applicable.]**
  - d. Errors and Omissions Liability insurance appropriate to the contractor’s profession.
- [Insert if the contracted work will utilize any watercraft:**
  - e. Watercraft Liability: Endorsement to Commercial General Liability policy or Protection and Indemnity Insurance, either covering owned or non-owned watercraft liability.]

2. **Minimum Limits of Insurance.** The contractor shall maintain limits no less than:

- |  |   |
|--|---|
| a. General Liability:<br><i>(Including operations, products and completed operations, as applicable)</i> | \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to the activities under this contract or the general aggregate limit shall be twice the required occurrence limit. |
| b. Automobile Liability:   | \$1,000,000 per accident for bodily injury and property damage.   |

- c. Worker's Compensation: As required by law with Employer's Liability of no less than \$1,000,000.
- [Add, if included above:**  
and Jones Act Evidence of Coverage or evidence that qualified to self-insure.
- or**  
and Longshore and Harbor Workers and Compensation Act Evidence of Coverage or evidence that qualified to self-insure.
- d. Errors and Omissions: \$1,000,000 per occurrence.
- e. Watercraft Liability Coverage: In the following amounts:
- a. Vessels under 30': \$1,000,000 combined single limit.
  - b. Vessels over 30' or vessel involved in research: \$2,000,000 combined single limit. ]
3. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Executive Officer.
4. Required Provisions Concerning the Conservancy and the State of California.
- a. Each insurance policy required by this section shall be endorsed to state that coverage shall not be canceled by either party, except after thirty days' prior written notice by first class mail has been given to the Conservancy or, in the event of cancellation of coverage due to nonpayment, after ten days' written notice to the Conservancy. The contractor shall notify the Conservancy within the earlier of: two days following the contractor's receipt of any notice of cancellation, non-renewal or material change that affects the required insurance; or five business days before the effective date of any cancellation, non-renewal or material change that effects required insurance coverage.
  - b. The contractor hereby grants to the State of California, its officers, agents, employees, and volunteers, a waiver of any right to subrogation which any insurer of the contractor may acquire against the State of California, its officers, agents, employees, and volunteers, by virtue of the payment of any loss under such insurance. The contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the contractor has received a waiver of subrogation endorsement from the insurer.
  - c. The general liability, automobile liability, and vessel policies (if any) are to contain, or be endorsed to contain, the following provisions:

- i. The State of California, its officers, agents and employees are to be covered as additional insureds, but only with respect to activities conducted relative to this contract. The additional insured endorsements are to be provided.
  - ii. For any claims related to this contract, the contractor's insurance coverage shall be primary insurance as respects the State of California, its officers, agents and employees, and not excess to any insurance or self-insurance of the State of California.
  - iii. The limits of the additional insured coverage shall equal the limits of the named insured coverage regardless of whether the limits of the named insurance coverage exceed those limits required by this agreement.
- d. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of section 2782 of the Civil Code.
- 5. Acceptability of Insurers. Insurance is to be placed with insurers admitted to transact business in the State of California and having a Best's rating of "B+:VII" or better or, in the alternative, acceptable to the Conservancy and approved in writing by the Executive Officer.
- 6. Subcontractors. The contractor shall include all subcontractors as insureds under its policies or shall require each subcontractor to provide and maintain coverage consistent with the requirements of this section.
- 7. Verification of Coverage. The contractor shall furnish the Conservancy with original certificates and amendatory endorsements, including the required additional insured endorsements, effecting coverage required by this clause. **[Add if commercial/private vessel insurance required:** In addition, the contractor shall provide proof of compliance with the vessel insurance requirements of this section.] All certificates and endorsements are to be received and approved by the Executive Officer before work commences. The Conservancy reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage, at any time.
- 8. Premiums and Assessments. The Conservancy is not responsible for premiums and assessments on any insurance policy.

**[Only include if errors and omissions coverage required at 1(d):**

- 9. Claims Made. If errors-and-omissions coverage is written on a claims-made form:
  - a. The "Retro Date" must be shown, and must be before the date of this contract or the beginning of work.
  - b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the work.



- c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a “Retro Date” prior to the effective date, the contractor must purchase “extended reporting” coverage for a minimum of five years after completion of the work under this contract.
- d. A copy of the claims reporting requirements must be submitted to the Executive Officer for review.]

### **NONDISCRIMINATION**

During the performance of this contract, the contractor and its subcontractors shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, ethnic group identification, physical disability (including HIV and AIDS), mental disability, medical condition, genetic information, gender, gender identity, gender expression, marital status, age, sexual orientation, or military and veteran status (Government Code section 12940). The contractor and its subcontractors also shall not unlawfully deny a request for or take unlawful action against any individual because of the exercise of rights related to family-care leave (Government Code sections 12945.1 and 12945.2). The contractor and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination, harassment and unlawful acts.

Consistent with Government Code section 11135, the contractor shall ensure that no one, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, is unlawfully denied full and equal access to the benefits of, or is unlawfully subjected to discrimination under, the work funded by the Conservancy under this contract.

Pursuant to Government Code section 12990, the contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.) and the applicable regulations (California Code of Regulations, Title 2, section 7285.0 et seq.). The regulations of the Fair Employment and Housing Commission regarding contractor Nondiscrimination and Compliance (Chapter 5 of Division 4 of Title 2 of the California Code of Regulations) are incorporated into this contract by this reference.

The contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. This nondiscrimination clause shall be included in all subcontracts entered into by the contractor to perform work provided for under this contract.

**[Add the following section if the contract total is \$100,000 or more (need to add if amendment creates total consideration of \$100,000 or more):]**

### **NONDISCRIMINATION IN PROVISION OF BENEFITS - DOMESTIC PARTNERS**

The contractor certifies that it is in compliance with Public Contract Code section 10295.3, which prohibits discriminating in the provision of benefits between

employees with spouses and employees with domestic partners, or between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees.

#### **AUDITS/ACCOUNTING/RECORDS**

The contractor shall maintain financial accounts, documents, and records (collectively, “records”) relating to this contract, in accordance with the guidelines of “Generally Accepted Accounting Principles” published by the American Institute of Certified Public Accountants. The records shall include, without limitation, evidence sufficient to reflect properly the amount, receipt, deposit, and disbursement of all funds related to the services that the contractor is providing, and time and effort reports. The contractor shall maintain adequate supporting records in a manner that permits tracing of transactions from the invoices to the accounting records and to the supporting documentation.

The contractor shall retain these records for three years following the date of final disbursement by the Conservancy under this contract, regardless of the termination date. The records shall be subject to examination and audit by the Conservancy and the Bureau of State Audits during this period.

Additionally, the Conservancy or its agents may review, obtain, and copy all records relating to performance of the contract. The contractor shall provide the Conservancy or its agents with any relevant information requested and shall permit the Conservancy or its agents access to the contractor’s premises, upon reasonable notice, during normal business hours, to interview employees and inspect and copy books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this contract and any applicable laws and regulations. The contractor shall maintain these records for a period of three years after final payment under the contract.

If the contractor retains any subcontractors to accomplish any of the work of this contract, the contractor shall first enter into a contract with each subcontractor requiring the subcontractor to meet the terms of this section and to make the terms applicable to all lower-tier subcontractors.

The Conservancy may disallow all or part of the cost of any activity or action that it determines to be not in compliance with the requirements of this contract.

#### **INDEPENDENT CONTRACTOR STATUS**

The contractor shall maintain its status as an independent contractor as defined in section 3353 of the California Labor Code. To this end, the contractor shall be under the control of the State, acting through its agent, the Conservancy, but only as to the results of its work and not as to the means by which the results are accomplished.

#### **COMPUTER SOFTWARE**

The contractor certifies that it has instituted and will employ systems and controls appropriate to ensure that, in the performance of this contract, state funds will not be used

for the acquisition, operation or maintenance of computer software in violation of copyright laws.

**[Add the following section if the contract total is more than \$200,000:]**

**PRIORITY HIRING CONSIDERATIONS**

To the extent required by Public Contract Code section 10353, the contractor shall give priority consideration in filling vacancies in positions funded by this contract to qualified recipients of aid under Chapter 2 (commencing with section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, in accordance with Article 3.9 (commencing with section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

**[Add the following section if the contract total is more than \$100,000:]**

**FAMILY-SUPPORT OBLIGATIONS**

The contractor acknowledges the state policy contained in Public Contract Code section 7110, that state contractors recognize the importance of child- and family-support obligations and fully comply with all applicable state and federal laws relating to child- and family-support enforcement. In executing this contract, the contractor represents that, to the best of the contractor's knowledge, the contractor is fully complying with the earnings-assignment orders of all employees and is providing the names of all new employees the New Hire Registry maintained by the Employment Development Department.

**DRUG-FREE WORKPLACE REQUIREMENTS**

By signing this contract the contractor certifies that it will comply with the requirements of the Drug-Free Workplace Act of 1990, commencing at Government Code section 8350. The Act generally requires the contractor to notify its employees that illegal drug distribution, use or possession is prohibited and will be subject to disciplinary action and to establish a drug awareness program that, in addition, informs employees about the dangers of drug abuse in the workplace and about any available employee assistance programs. Further, the contractor shall give a copy of this notification to each employee working under this contract and require the employee to agree to abide by these rules.

**NATIONAL LABOR RELATIONS BOARD**

By signing this contract, the contractor states under penalty of perjury that, during the two-year period immediately preceding the date of the contract, no more than one final unappealable finding of contempt of court has been issued against the contractor for failure to comply with an order of the National Labor Relations Board.

**AIR AND WATER POLLUTION**

In accordance with Government Code section 4477, the contractor represents that it is not in violation of any order or resolution of the State Air Resources Board or an air pollution control district, and is not subject to a cease and desist order issued pursuant to section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions, and has not been finally determined to be in violation of provisions of federal law relating to air or water pollution.

**EXPATRIATE CORPORATIONS**

The contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

#### **SETTLEMENT OF DISPUTES**

If any dispute arises out of this contract, the contractor or the Conservancy shall notify the other party within ten days of discovery of the problem. Within thirty days of such notification, the Executive Officer may confer with the contractor and Conservancy staff members for the purpose of resolving the dispute. If the Conservancy is unable to resolve the dispute to the contractor's satisfaction, the contractor may proceed under Government Code sections 900 et seq. with any claims against the Conservancy arising out of this contract. If the dispute cannot be resolved to the Conservancy's satisfaction, the Conservancy may pursue any remedies available, including invoking its rights under the TERM OF CONTRACT, EARLY TERMINATION AND SUSPENSION clause of this contract.

#### **EXECUTIVE OFFICER'S DESIGNEE**

The Executive Officer shall designate a Conservancy project manager who shall have authority to act on behalf of the Executive Officer with respect to this contract. The Executive Officer shall notify the contractor of the designation in writing.

#### **AMENDMENT**

This contract may be modified only upon written agreement of the parties. However, the schedule [as provided in the **SCOPE OF CONTRACT** section, above] may be modified by written letter of the contractor countersigned by the Executive Officer, and that modification shall have the same effect as if included in the text of this contract.

#### **ASSIGNMENT, SUBCONTRACTING AND DELEGATION**

The contractor has been selected to provide the services and perform the tasks of this contract because of its unique skills and experience. Except as expressly provided in this contract, the contractor shall not assign, subcontract or delegate any of the services and tasks to be performed, without written authorization by the Executive Officer.

#### **TIMELINESS**

Time is of the essence in this contract.

#### **LOCUS**

This contract is deemed entered into in the County of Alameda.